

one did not pinch himself and look back over his own experience over there he might almost believe that this is the whole picture. Those who know Russia today cannot make the mistake Mr. Chamberlin does.

Mr. Chamberlin has refused to see the broader movement underlying all of the surface failures and annoyances which have apparently weighed so heavily upon him that he has let his eyes be turned from contemplating the forest because of the presence of some blighted trees. One almost wonders whether it would not have been better if Mr. Chamberlin had speculated, as Aldous Huxley does in his *Ends and Means*, on what was to be the future of collectivism, and told us that he was merely speculating, rather than presenting his arguments as warnings of the inevitable. Anyone should be allowed to speculate, at least if one believes in the liberty for which Mr. Chamberlin prays, but perhaps a less sophisticated public than that which Mr. Chamberlin undoubtedly numbers among the majority of his readers should not be confused by the absence of a tag, marked "speculations."

Be all this as it may, the book comes as a welcome argument for the preservation of democracy in our America by means of greater liberalism in legislative halls. Liberal lawyers will find in it renewed encouragement in carrying out their struggle to find a path somewhere between bloody revolution and fascism. As such a tool in the struggle this book has its place, and it is only to be regretted that the author has thought it necessary to tell us in such authoritative terms that the Soviet Union will approach what amounts to a collapse, for such a lesson may some day prove unfounded, and then those who are surprised will not thank Mr. Chamberlin.

JOHN N. HAZARD\*

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**Cases on Criminal Law and Procedure**—Second edition. Edited by John B. Waite. Chicago: Foundation Press. 1937. Pp. xxvii, 818.

The second edition of Professor Waite's casebook on Criminal Law and Procedure represents a retreat,—perhaps a retreat to a sounder position, but none the less a retreat. The first edition, published in 1931, was best known for the novel organization of its materials, in that it concerned itself only with the general principles of criminal law, and gave no space to the specific crimes as such. But wisely or unwisely, rightly or wrongly, most teachers of criminal law continue to believe they must give their students some understanding of the more important common law crimes, and that they must therefore devote some part of the course to an orderly treatment of those crimes. Professor Waite's second edition makes a concession to that point of view.

He does so, however, without giving up the essential outlines of his original edition. The new material on specific crimes is ingeniously interpolated into Professor Waite's conceptual organization by the addition of two new sections. Under the part dealing with the act essential to criminal liability, Professor Waite has added a chapter on "The Particular Acts," in which are treated the objective essentials of six specific crimes: homicide, assault, arson, larceny, burglary, and embezzlement. Similarly, under the part on "The Mental Attitude," there is now inserted a section dealing with the mental requisites in eight specific crimes—murder, manslaughter, assault (includ-

\* Member of New York Bar; Moscow Juridical Institute, 1934-37, as agent for the Institute of Current World Affairs.

ing assault with intent and assault under privilege), arson, larceny, robbery, burglary, breaking and entering, and sundry statutory crimes.

Having thus given some recognition to the specific crimes as such, Professor Waite also concedes to them certain materials which in the first edition were found under various conceptual headings. Not only is the general heading, "The Mental State—Its Importance" cut down from twenty-five pages to nine, and many of the cases formerly found thereunder put under the mental attitude involved in specific crimes, but such important conceptual headings as "Negligence" and "Motive" have been eliminated entirely, the cases formerly found under these headings also being put under the various specific crimes. "Passion" too has been eliminated as a general "Mitigating or Exonerating Circumstance," the cases formerly found under this heading being placed under the mental attitude in manslaughter. The most extreme instance of the abandonment of the general conceptual approach in favor of one based on specific crimes is the moving of the material on proximate cause, which had constituted a separate chapter in the first edition, to become a subhead under the topic covering the particular acts required in Homicide<sup>1</sup>

The new material on specific crimes comprises one hundred and forty-five pages<sup>2</sup>—still not very much, when compared with other current casebooks. Another new feature is the addition of twenty pages of material on extradition.

To compensate for these additions, the rest of the volume has been cut down.<sup>3</sup> This cutting down has been achieved with minimum substantial loss. Some of the cases have been pruned by abbreviating statements of fact and omitting some of the more or less irrelevant parts of opinions. Certain topics covered in the first edition have been omitted entirely, such as civil remedies for unlawful arrest (liability of a person inducing arrest, and release from and compensation for illegal arrest), the admissibility of evidence of confessions, and inquisitions by grand juries. Here and there throughout the book cases found in the first edition have been omitted. Thus a subhead found in the first edition under "The Act" and entitled "Its Importance" has been entirely omitted—without loss, in this reviewer's opinion, because the three cases making up this heading discussed elements of particular crimes, which are better treated in connection with those crimes.

In other respects, the new edition retains the virtues and weaknesses of the old, all of which are pointed out by the reviewers at the time of original publication.<sup>4</sup> The main objection made to the first edition was that Professor Waite had entirely omitted certain important topics, such as condonation or guilt of the injured party, the effect of promises of immunity, the criminal liability of corporations, and the whole field of probation, indeterminate sentences and parole. The same criticism can be made of the second edition. But any case book which would satisfy the reviewers as reasonably

<sup>1</sup> It is true that all the cases on the subject, retained almost intact from the first edition, are homicide cases.

<sup>2</sup> There are sixty-four pages on the act involved in the several crimes discussed, and eighty-one pages on the mental element.

<sup>3</sup> The new edition has 818 pages as against 814 in the old.

<sup>4</sup> See reviews of the first edition: Bryan, 21 Calif. L. Rev. 535 (1933); Nutting, 19 Iowa L. Rev. 492 (1934); Kingsley, 7 So. Calif. L. Rev. 485 (1934); Moreland, 20 Ky. L. J. 493 (1932); Glueck, 43 Yale L. J. 512 (1934).

complete would almost necessarily contain at least 1,100 pages (witness Sayre's 1,096 with only 46 devoted to "Modern Criminal Procedure"). And in schools where only one short course is devoted to the whole subject of criminal law and criminal procedure, it is at least debatable whether the teacher will give a better rounded course by covering 800 pages of an 1,100-page book with omissions chosen by himself, or all of an 800-page book, carefully pruned by the editor. Each teacher in such circumstances must decide this question for himself, by asking himself whether he considers himself a better editor than Professor Waite. (Many will continue to answer in the affirmative, some of them, no doubt, correctly.)

HENRY P. WEIHOFEN\*

\* Assistant Professor of Law, the University of Colorado School of Law.